

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

April 25, 2000

**IN RE:**

**APPLICATION OF MEMPHIS NETWORKX, LLC,  
FOR A CERTIFICATE OF PUBLIC  
CONVENIENCE AND NECESSITY TO PROVIDE  
INTRASTATE TELECOMMUNICATION  
SERVICES AND JOINT PETITION OF MEMPHIS  
LIGHT GAS & WATER DIVISION, A DIVISION  
OF THE CITY OF MEMPHIS, TENNESSEE  
("MLGW") AND A&L NETWORKS-TENNESSEE,  
LLC ("A&L"), FOR APPROVAL OF AGREEMENT  
BETWEEN MLGW AND A&L REGARDING JOINT  
OWNERSHIP OF MEMPHIS NETWORKX, LLC.**

**DOCKET NO. 99-00909**

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**PRE-HEARING OFFICER'S ORDER  
GRANTING PETITION TO INTERVENE OF THE INTERNATIONAL  
BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1288**

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At a regularly scheduled Authority Conference held on December 20, 1999, the Directors of the Tennessee Regulatory Authority ("Authority" or "TRA") appointed General Counsel or his designee to act as Pre-Hearing Officer in this matter to render decisions on petitions for intervention, to hear preliminary matters prior to the Hearing and to set a procedural schedule to completion. This matter came before the Pre-Hearing Officer upon the Petition to Intervene filed on April 4, 2000 by the International Brotherhood of Electrical Workers, Local 1288 ("IBEW"). The Pre-Hearing Officer considered the IBEW's Petition at a Pre-Hearing Conference held on April 5, 2000 and sought comments on the Petition from all parties in this matter. Counsel for IBEW stated that the petition was filed due to concerns about a Memorandum of Understanding

**PROCEED**  
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between the IBEW and Memphis Light Gas & Water Division ("MLG&W") and the impact the joint venture between MLG&W and A&L Networks-Tennessee LLC ("A&L") may have on that Memorandum. Counsel expressed concern regarding a joint venture between MLG&W and a private entity (A&L) whose wage rates are less than those currently paid to IBEW members. Counsel also stated that the possibility of the future disbanding and outsourcing of MLG&W and the possibility of using fiber optic technology from this venture for automatic meter reading presented additional concerns for the IBEW.

The Pre-Hearing Officer inquired of counsel the extent to which he expected the IBEW to participate in this proceeding. Counsel stated that the IBEW desired the fullest participation possible without delaying the proceeding, including presenting one (1) or two (2) witnesses and cross-examining witnesses at the Hearing.

The Applicant and Joint Petitioners objected to the IBEW's Petition, stating that the Petition was filed outside the time for filing petitions for intervention as established in the Pre-Hearing Notice of February 8, 2000 and would obstruct the prompt and orderly conduct of these proceedings. The Applicant and Joint Petitioners also asserted that the type of relief being sought by the IBEW was not within the Authority's jurisdiction. The Applicant and Joint Petitioners stated that employees of MLG&W are not employees of Memphis Networkx and that, in the event MLG&W employees are employed by Memphis Networkx, such a relationship would be by way of contract, which is the current practice of MLG&W. Further, the Applicant and Joint Petitioners stated that A&L is not a contractor with MLG&W and that the issue of the possibility of fiber optic meter reading and the impact on the jobs of IBEW members was not within the Authority's jurisdiction.

The Applicant and Joint Petitioners also objected to the IBEW's requests to present and cross-examine witnesses at the Hearing because the issues raised by the IBEW are outside the scope of the issues established in this proceeding. Counsel for the Applicant and Joint Petitioners stated that if the intervention were permitted it should be for monitoring purposes only and that the IBEW should not be allowed to present witnesses, raise additional issues, or cross-examine witnesses. The current Intervenors did not object to the IBEW's Petition.

Counsel for the IBEW responded that the IBEW's intervention could be limited and stated that, if not allowed to present witnesses, the IBEW would like to make a statement to the Directors at the Hearing and to cross-examine witnesses.

#### **Criteria for Permitting Interventions**

Tenn. Code Ann. § 4-5-310(a) sets forth the following criteria for granting petitions for intervention:

##### **4-5-310. Intervention**

(a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if:

- (1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;
- (2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and
- (3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.

Pursuant to Tenn. Code Ann. § 4-5-310(c), if a petitioner qualifies for intervention, the administrative judge or hearing officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted

or at any subsequent time. Such conditions may include: (1) limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition; (2) limiting the intervenor's use of discovery, cross-examination and other procedures so as to promote the orderly and prompt conduct of the proceedings; and (3) requiring two (2) or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery and other participation in the proceedings.

After reviewing the Petition and hearing argument of counsel at the April 5, 2000 Pre-Hearing Conference, the Pre-Hearing Officer found that the IBEW's Petition to Intervene complied with the requirements of Tenn. Code Ann. § 4-5-310. Pursuant to Tenn. Code Ann. § 4-5-310(c), the intervention was granted with limitations to permit IBEW to monitor the proceedings and obtain copies of documents filed in the proceedings. The Pre-Hearing Officer also granted the IBEW's request to make a brief statement in accordance with opening statements that may be made by counsel for other parties at the beginning of the hearing. Regarding the IBEW's request to conduct cross-examination of witnesses, the Pre-Hearing Officer directed the IBEW to submit, not later than April 7, 2000, a list of the areas in which IBEW anticipated conducting cross-examination during the hearing. The Applicant and Joint Petitioners were directed to respond to the IBEW's filing not later than April 10, 2000.

On April 7, 2000, IBEW filed its Outline of Proposed Cross-examination at the Hearing. This listed eight (8) areas of potential cross-examination questions. The Applicant and Joint Petitioners responded to each of the eight (8) areas listed by the IBEW and asserted that allowing such cross-examination would interfere with the prompt

and orderly conduct of the proceeding, and further asserted that the issues the IBEW sought to address were outside the scope of this proceeding and, in some instances, outside the jurisdiction of the Authority. Additionally, the Applicant and Joint Petitioners argued that certain parts of the proposed cross-examination would be duplicative of that of other parties and that still other proposed cross-examination involved legal issues that should be determined by the Directors.

Under Tenn. Code Ann. § 4-5-310, any party having a legal interest that may be determined in a proceeding before the Authority may file a petition for intervention to participate in the proceeding in question. In this proceeding, the Authority is considering the approval of the joint venture agreement between MLG&W and A&L in accordance with Tenn. Code Ann. § 7-52-103(d). Tenn. Code Ann. § 7-52-103(d) provides as follows:

(d) In addition to the authority granted under otherwise applicable law, each municipality operating an electric plant has the power and is authorized on behalf of its municipality, acting through the authorization of the board or supervisory body having responsibility for the municipal electric plant, to establish a joint venture or any other business relationship with one (1) or more third parties to provide related services, subject to the provisions of §§ 7-52-402 - 7-52-407. No contract or agreement between a municipal electric system and one (1) or more third parties for the provision of related services that provides for the joint ownership or joint control of assets, the sharing of profits and losses, or the sharing of gross revenues shall become effective or enforceable until the Tennessee regulatory authority approves such contract or agreement on petition, and *after notice and opportunity to be heard has been extended to interested parties*. Notwithstanding § 65-4-101(a)(2) or any other provision of this code or of any private act, to the extent that any such joint venture or other business relationship provides related services, such joint venture or business relationship and every member of such joint venture or business relationship shall be subject to regulation by the Tennessee regulatory authority in the same manner and to the same extent as other certified providers of telecommunications services, including, without limitation, rules or orders governing anti-competitive practices, and shall be considered as and have the duties of a public utility, as defined in § 65-4-

101, but only to the extent necessary to effect such regulation and only with respect to the provision of related services. This provision shall not apply to any related service or transaction which is not subject to regulation by the Tennessee Regulatory Authority. (emphasis added.)

Tenn. Code Ann. § 7-52-103(d) specifically provides that the Authority shall not act on the proposed joint venture agreement until “after notice and opportunity to be heard has been extended to interested parties.” The inclusion of such language in this statute indicates that the Tennessee General Assembly wanted to provide to parties who may have interests that will be affected by such a joint venture agreement the ability to voice their interests and concerns to the Authority.

Tenn. Code Ann. § 7-52-103(d) permits the IBEW to voice its interests and concerns about the proposed joint venture agreement to the Authority. The IBEW has sought and has been granted participation in this proceeding through the mechanism provided in Tenn. Code Ann. § 4-5-310. The IBEW will be permitted to make a statement to the Authority. It is the decision of the Pre-Hearing Officer that the IBEW should also be permitted to conduct cross-examination of witnesses who are already scheduled to appear at the Hearing.

After reviewing the filings by the IBEW and the Applicant and Joint Petitioners, the Pre-Hearing Officer finds that some of the areas of proposed cross-examination are within the scope of issues to be determined in this matter. The Pre-Hearing Officer further finds that cross-examination into these areas by the IBEW will not impair “the orderly and prompt conduct of the proceedings,” particularly now that the time allowed for the Hearing has been expanded beyond two days. Nonetheless, the Pre-Hearing Officer has determined that not all of the areas of proposed cross-examination listed by

the IBEW are material to the issues under consideration in this matter. Specifically, the Pre-Hearing Officer finds that the following areas are outside the scope of the issues in this proceeding:

2. Questions relating to the intentions of MLG&W with respect to the creation of similar joint ventures in the future which would take over its gas, water and/or electric operations.
5. Questions relating to why MLG&W is going into business with an out-of-state company that is non-union and pays low wages to its employees, and the impact of such on the Memorandum of Understanding, the IBEW, and its members.

While the Authority may not be authorized to provide specific relief to the IBEW as argued by the Applicant and Joint Petitioners, the statute requiring TRA approval of the joint venture agreement contemplates that interested parties will have a forum for presenting their interests and concerns. Through a brief statement and through limited cross-examination, the IBEW is being provided that forum during the Hearing.

**IT IS THEREFORE ORDERED THAT:**

1. The International Brotherhood of Electrical Workers, Local 1288 ("IBEW") is given leave to intervene and participate in this proceeding as its interests may appear and receive copies of any notices, orders or other documents herein. The IBEW's participation in the Hearing scheduled to begin on May 1, 2000 shall be limited to presenting a brief statement of its position in this matter and conducting cross-examination of any witnesses testifying during the hearing. The IBEW's cross-examination shall not include questions relating to the areas listed as Numbers 2 and 5 in the IBEW's Outline of Proposed Cross-Examination; and

2. Any party aggrieved by the decision of the Pre-Hearing Officer in this matter may file a Petition for Appeal with the Tennessee Regulatory Authority.

Richard Collier  
RICHARD COLLIER ACTING AS  
PRE-HEARING OFFICER

ATTEST:

K. David Waddell  
K. David Waddell, Executive Secretary